IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.696 OF 2006
IN
FIRST APPEAL NO.272 OF 2006

Abdul Haq Abdul Hussein ...Applicant

Versus

1. Akbarali Suleman Khan (deceased through his heirs)
   Smt.Saharunnisa Akbarali Khan & Ors. ... Respondents

Shri A.G.Damle i/by M/s Ashoka Law Firm for the Applicant.
Shri M.A.Haindaday with Shri A.S.H.Khan for the Respondent Nos.1B to 1G.
Shri G.S.Godbole i/by M/s R.J.Singh & Company for the Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : JANUARY 31, 2007.

P.C.:

1. Heard learned counsel appearing for the parties. This Application is filed by the original Plaintiff-Applicant. The suit filed by the Applicant-Plaintiff for various reliefs in respect of the suit property described in prayer (a) of the plaint has been dismissed. The prayer in this Application is for partition of gala Nos.1 and 2, for injunction, restraining the Respondent No.1(B) to 1(F) from surrendering the suit premises and from creating any third party interests in respect of the suit property. Another prayer is for appointing the Applicant as an agent of the court receiver. The last prayer is for permitting withdrawal of the amount deposited by the

Defendant No.1(B) to 1(G) for maintenance of original Defendant No.2.

2. The submission of the learned counsel appearing for the Applicant is that though during the pendency of the suit, the original Defendant No.1 was appointed as an agent of the receiver, from the date of demise of the Defendant No.1 in the year 2003, his legal representatives were not appointed as agents of the receiver. The Applicant has contended that though during the pendency of the suit, the original Defendant NO.1 was appointed as the agent without security and royalty, if the Applicant is appointed as the agent of the receiver, he is willing to pay the royalty and to furnish security. The learned counsel appearing for the Respondent Nos.1(B) to 1(G) who are brought on record in the suit as the legal representatives of the deceased Defendant No.1 has referred to the affidavits of the said Respondent Nos.1(B) to 1(G) in which they have stated that they are willing to pay Rs.10,000/- per month by way of monthly royalty if they are appointed as the agents. The learned counsel appearing for the third Respondent (third Defendant) i.e the legal representative of the second Defendant (second Respondent herein) submitted that he has also applied for appointing himself as an agent of the receiver and

the said Respondent is ready and willing to pay royalty of Rs.25,000/- per month.

3. By order dated 06th March, 1991 passed in Notice of Motion taken out by the Applicant Plaintiff, during the pendency of the suit, the court receiver, High Court, Mumbai was appointed as the receiver of the suit premises and the receiver was directed to appoint the Defendant No.1 as his agent to run the business in the suit premises without security and without royalty. The Defendant No.1 was directed to deposit Rs.2,000/- per month in the trial Court and the said amount was permitted to be withdrawn by the second Defendant.

4. During the pendency of the suit filed by the Applicant the first Defendant was appointed as the agent of the court receiver without any security. The order dated 06th March, 1991 passed by the Trial Court as well as the prayers in the plaint indicate that at the time of appointing the Receiver, the Defendant No.1 was in possession of the suit premises. After suit is dismissed on merits, now the Applicant-Plaintiff cannot claim that he should be appointed as an agent of the receiver. In so far as claim of the third Respondent is concerned, during the pendency of the suit he never applied for appointing himself as an agent of the court

receiver. Though he attained majority long before disposal of the suit, he never objected to the interim arrangement made during the pendency of the suit. As the first Defendant continued to act as the agent of the court receiver without security and royalty right from the year 1991, the Defendant Nos.1(B) to 1(G) (the Respondent Nos.1(B) to 1(F) herein) deserve to be appointed as the agents of the court receiver. Though during pendency of the suit the first Defendant was not liable to pay any security or royalty, considering the fact that the business is yielding income, now the agent of the Receiver will have to pay royalty. The Respondent Nos.1(B) to 1(G) have undertaken to pay total royalty of Rs.10,000/- per month. Merely because the third Respondent is offering to pay more royalty, he cannot be appointed as the agent of court receiver as during the pendency of the suit he never claimed the said relief. There is no reason to disturb the interim arrangement made during the pendency of the suit from the year 1991 onwards. Moreover, by a separate order, I have permitted the third Respondent to withdraw the amount which was due and payable to the second Defendant.

5. So far as prayer (a) in this Application is concerned, the same is in the nature of final relief.

As the Respondent Nos.1(B) to 1(G) are being appointed as the agents of the court receiver on usual terms, it will not be necessary to grant prayer clauses (b) to (d). The prayer (e) cannot be granted in view of reasons recorded in Civil Application No.2707 of 2006.

6. Hence, Application is disposed of by passing following order:

(i) Court Receiver, High Court, Mumbai is appointed as the receiver of the suit premises and the business carried on therein. He will appoint the Respondent Nos.1(B) to 1(G) as the agents for conducting the hotel business in the suit premises.

(ii) The Agents will be liable to pay royalty of Rs.10,000/- per month from November 2005. The Court Receiver will grant reasonable time to pay the royalty upto end of January 2007. Apart from the royalty, the said Respondents will have to furnish security to the satisfaction of the receiver. The said Respondents will have to also execute usual agency agreement.

(iii) There will be no orders as to costs.

JUDGE